

# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION N	0.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,408		11/08/2001	Nobutaka Wakamiya	19036/34546A	6355
4743	7590	11/29/2004		EXAMINER	
		RSTEIN & BOR	LANDSMAN, ROBERT S		
6300 SEA 233 S. W.			ART UNIT	PAPER NUMBER	
CHICAG	O, IL 60	606	1647		

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)		Application No.	Applicant(s)				
Robert Landsman  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  If the period for reply specified above is less amountary (30) stays, a reply within the statutory memorial official days will be considered limitly.  If the period for reply specified above is less amountary (30) stays, a reply within the statutory memorial official days will be considered limitly.  If the period for reply specified above is less amountary period will appear 35 (8) (MONTHS from hemiting date of this communication.  Any reply received by the Office liand than three months after the mailing date of this communication, event limitly little, may reduce any search patient than adjustment. See 37 CFR 1.76(b).  Status  1) Responsive to communication(s) filled on 15 November 2004.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the menits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 11-12 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  Claim(s) is/are allowed.  Claim(s) is/are objected to.  3) Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  Application Papers  9) The data may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Ack		10/007,408	WAKAMIYA, NOBUTAKA				
The MALLNG DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of the may be examined and the provision of 37 CFR 1.136(a). In co event, however, may a reply be finely filed  Extensions of the may be exceeded under the provision of 37 CFR 1.136(a). In co event, however, may a reply be finely filed  Extensions of the may be exceeded and the communication.  If the period for reply is specified another period for reply with the statutory priod will be additionable that the filed of the communication.  If the period for reply is period above, the maximum statutory priod will apply and will acquise (the filed filed for the period for reply will be statuted to reply in the filed above, the maximum statutory priod will apply and will acquise (the filed f	Office Action Summary	Examiner	Art Unit				
A SHORTHED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  Elements of them may be settled under the provision of 3 (CPR 1.1356). In no event, however, may a reply be limely filed after SDx (8) MONTH'S from the mailing date of this communication.  If the period to reply specified shows, the maintain standary period will apply and will organ SDx (8) MONTH'S from the mailing date of this communication.  If the period to reply specified store is less than the growth will apply and will organ SDx (8) MONTH'S from the mailing of the communication.  Provided by the Office tilt will be the three maintenance after the mailing date of this communication, even if simply filed, may reduce any served palant term adjustment. See 37 CFR 1.704(b).  Status  1)		I					
THE MAILING DATE OF THIS COMMUNICATION.  Edections of shore may be validable under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely field  Edections of shore may be validable under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely field  In the period for reply is peached above, the maximum statutory selected all pages and will expect \$3.00 (MONTHS from the mailing date of this communication.  Failure to reply within the scol or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office after than there may retained patient from ediparations.  Failure to reply within the scol or extended period for reply will. by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than there invalidation and the provision of the period of this communication, even if simely filed, may reduce any search patient from ediparations.  Status  1)	The MAILING DATE of this communication app Period for Reply	pears on the cover sheet wit	th the correspondence address				
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3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  *Attachment(s)  Description of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.							
application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)	2. Copies of the certified copies of the priority documents have been received in Application No						
* See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)    Description of References Cited (PTO-892)   Description of the certified copies not received.	application from the International Bureau	(DCT Dula 17 2(a))	eceived in this National Stage				
Attachment(s) )							
) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)		. The servines sepice fieric	e e e e e e e e e e e e e e e e e e e				
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)   Notice of Draftsperson's Patent Drawing Review (PTO-948)   Paper No(s)/Mail Date	2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SR/08)	Paper No(s)/N	Mail Date				
Paper No(s)/Mail Date 6) Other:	Paper No(s)/Mail Date	6) Other:					

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#### **DETAILED ACTION**

#### 1. Formal Matters

- A. The Amendment dated 11/15/04 have been entered into the record.
- B. Claim 10 has been canceled. New claims 11-17 have been added. Therefore, claims 11-17 are the subject of this Office Action.
- C. All Statutes under 35 USC not found in this Office Action can be found, cited in full, in a previous Office Action.

# 2. Specification

A. The objection to the specification has been withdrawn in view of Applicants' amendment to the priority data.

#### 3. Claim Objections

- A. The syntax of claim 12 could be improved by add the word "the" before the terms "presence" and "absence" in part (b).
- B. The syntax of claim 13 could be improved by amending part (d) to recite "transforming a host cell with the vector of part (c)" since the claim, as worded, implies that the vector is being transformed. Furthermore, this amendment would help to clarify which vector is being used.

### 4. Claim Rejections - 35 USC § 112, first paragraph - enablement

A. No rejection is being made over claim 13 since, even though parts (d) and (e) do not recite that the host cell is "isolated," the preamble of the claim requires that the protein be purified. Therefore, the claim does not read on the transfection of a host cell for the purposes of gene therapy.

#### 5. Claim Rejections - 35 USC § 112, second paragraph

A. The rejection of claim 10 under 35 USC 112, second paragraph, has been withdrawn in view of Applicants' cancellation of the claim and the fact that the Malhorta reference does demonstrate that the regions claimed in the present invention are well-known in the art.

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- B. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: to what the virus-infected cells are being presented in part (b).
- C. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: a conclusion step which relates back to the preamble and which identifies when the conditions of the preamble have been met. For example, after part (d), add "wherein an inhibition of budding demonstrates that the hMBP possesses anti-Influenza virus activity.
- D. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how hMBP can be produced from amplifying a native conglutinin cDNA. It appears from page 1, line 16 of the specification that hMBP and conglutinin are different proteins.

# 6. Claim Rejections - 35 USC § 102

A. Claims 11-17 are rejected under 35 USC 102 for the reasons already of record on page 3 of the Office Action mailed 5/11/04. Applicants argue that the present invention only recites "two units of Gly-Xaa-Xaa" whereas Kawasaki have additional Gly-Xaa-Xaa units. Furthermore, Applicants argue that the protein of the present invention does not require an "N-terminal region-carrying cysteine" as is present in Kawasaki. These arguments have been considered, but are not deemed persuasive. The present claims recite "having a domain structure **comprising...**" Therefore, this is open language. Kawasaki teach a protein which comprises a collagen region consisting the two Gly-Xaa-Xaa, though additional Gly-Xaa-Xaa residues exist in Kawasaki. Furthermore, this open language allows for the presence of an "N-terminal region-carrying cysteine" as is present in Kawasaki. Applicants can overcome this rejection by demonstrating that the additional Gly-Xaa-Xaa residues of Kawasaki are part of the art-accepted region identified as the "collagen region" and, therefore, that the collagen region of Kawasaki consists of more than just the two repeats. As stands, Applicants have argued that these additional residues are present in Kawasaki, but have not shown that these regions are actually in the collagen region.

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## 6. Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

A. Claims 11-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,110,708. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims are drawn towards conglutinins/mannam –binding proteins comprising identical regions and using identical primers, vectors, phages and host cells for their production. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have produced the protein of the present invention in light of the '708 patent since it appears that the protein of the '708 patent would meet the limitation of the present claims and that the protein of the present invention would fall under the scope of the '708 patent.

#### 7. Conclusion

A. No claim is allowable.

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# Advisory information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Landsman whose telephone number is (571) 272-0888. The examiner can normally be reached on M-Th 9 AM-6 PM (eastern); alt F 9 AM-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <a href="http://pair-direct.uspto.gov">http://pair-direct.uspto.gov</a>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Landsman Primary Examiner Art Unit 1647

ROBERT LANDSMAN PATENT EXAMINER